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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 CORNELL A. BENSON, JR.,

10 Petitioner,

Case No. C10-892-JCC-JPD

11 v.

12 STEVE SINCLAIR,

13 Respondent.

REPORT AND RECOMMENDATION

14 INTRODUCTION AND SUMMARY CONCLUSION

15 Petitioner Cornell Benson, Jr., has submitted to this Court for review a petition for writ of  
16 habeas corpus under 28 U.S.C. § 2254.<sup>1</sup> Petitioner, by way of the instant petition, seeks relief  
17 from a 2007 King County Superior Court judgment and sentence. Respondent has filed an  
18 answer to the petition together with relevant portions of the state court record. This Court,  
19 having carefully reviewed the petition, the answer, and the state court record, concludes that  
20 petitioner's federal habeas petition should be denied and this action should be dismissed with  
21 prejudice.

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23 <sup>1</sup> Petitioner was in the custody of the Washington Department of Corrections at the time  
he filed his petition. However, it appears that petitioner may currently be in the custody of the  
King County Department of Adult and Juvenile Detention. (See Dkt. No. 26 at 16.)



1           The State charged Benson with one count of second degree assault  
2           (domestic violence). The jury convicted Benson as charged. The jury also  
3           returned a special verdict that Benson was armed with a deadly weapon when he  
4           committed the crime.

5           (Dkt. No. 29, Ex. 2 at 1-3.)

6           On December 7, 2007, petitioner was sentenced to a total term of 75 months  
7           confinement. (*Id.*, Ex. 1 at 4.) Petitioner thereafter appealed his conviction to the Washington  
8           Court of Appeals. (*See id.*, Exs. 3, 5, 6 and 7.) On March 2, 2009, the Court of Appeals filed an  
9           unpublished opinion affirming petitioner's conviction. (*Id.*, Ex. 2.) On April 21, 2009, petitioner  
10          submitted a motion for reconsideration to the Court of Appeals for filing. (*Id.*, Ex. 8.) However,  
11          the Court of Appeals had previously denied a motion by petitioner for an extension of time to file  
12          his motion for reconsideration and, thus, the motion for reconsideration was placed in the file  
13          without action. (*Id.*, Exs. 9 and 10.) Petitioner did not seek further review by the Washington  
14          Supreme Court, and the Court of Appeals issued a mandate terminating direct review on May 29,  
15          2009. (*Id.*, Ex. 11.)

16          On May 28, 2009, petitioner filed a personal restraint petition in the Washington Court of  
17          Appeals. (*See id.*, Ex. 12.) Petitioner asserted therein that his trial counsel rendered ineffective  
18          assistance when she failed to pursue a diminished capacity defense. (*See id.*) On June 24, 2009,  
19          the Acting Chief Judge of the Court of Appeals issued an order dismissing the petition. (*Id.*, Ex.  
20          13.) Petitioner thereafter filed a motion for discretionary review in the Washington Supreme  
21          Court. (*Id.*, Ex. 14 at 2.) On September 17, 2009, the Supreme Court Commissioner issued a  
22          ruling denying review and, on December 30, 2009, the Court of Appeal issued a certificate of  
23          finality in petitioner's personal restraint proceedings. (*Id.*, Exs. 15 and 16.) Petitioner now seeks  
            federal habeas review of his conviction.

1 GROUND FOR RELIEF

2 Petitioner presents a single ground for relief in his federal habeas petition:

3 Ineffective Assistance of Counsel (Diminished Compasity (sic)).

4 (Dkt. No. 13 at 5.)

5 DISCUSSION

6 Respondent concedes in his answer to the petition that petitioner has exhausted his single  
7 ground for federal habeas relief. Respondent argues, however, that petitioner is not entitled to  
8 relief because the state courts reasonably denied petitioner's ineffective assistance of counsel  
9 claim.

10 Standard of Review

11 Under the Anti-Terrorism and Effective Death Penalty Act, a habeas corpus petition may  
12 be granted with respect to any claim adjudicated on the merits in state court only if the state  
13 court's decision was *contrary to*, or involved an *unreasonable application* of, clearly established  
14 federal law, as determined by the Supreme Court, or if the decision was based on an  
15 unreasonable determination of the facts in light of the evidence presented. 28 U.S.C.  
16 § 2254(d) (emphasis added).

17 Under the "contrary to" clause, a federal habeas court may grant the writ only if the state  
18 court arrives at a conclusion opposite to that reached by the Supreme Court on a question of law,  
19 or if the state court decides a case differently than the Supreme Court has on a set of materially  
20 indistinguishable facts. *See Williams v. Taylor*, 529 U.S. 362 (2000). Under the "unreasonable  
21 application" clause, a federal habeas court may grant the writ only if the state court identifies the  
22 correct governing legal principle from the Supreme Court's decisions but unreasonably applies  
23 that principle to the facts of the prisoner's case. *Id.* The Supreme Court has made clear that a

1 state court's decision may be overturned only if the application is "objectively unreasonable."  
2 *Lockyer v. Andrade*, 538 U.S. 63, 69 (2003).

### 3 Ineffective Assistance of Counsel

4 Petitioner asserts in his petition that he was denied effective assistance of counsel when  
5 his trial counsel failed to pursue a diminished capacity defense. A criminal defendant has a right,  
6 guaranteed by the Sixth Amendment, to the effective assistance of counsel. *Strickland v.*  
7 *Washington*, 466 U.S. 668, 687 (1984). Claims of ineffective assistance of counsel are evaluated  
8 under the two-prong test set forth in *Strickland*. Under *Strickland*, a defendant must prove (1)  
9 that counsel's performance was deficient and, (2) that the deficient performance prejudiced the  
10 defense. *Strickland*, 466 U.S. at 687.

11 With respect to the first prong of the *Strickland* test, a petitioner must show that counsel's  
12 performance fell below an objective standard of reasonableness. *Strickland*, 466 U.S. at 688.  
13 Judicial scrutiny of counsel's performance must be highly deferential, and there is a strong  
14 presumption that counsel's performance fell within the wide range of reasonably effective  
15 assistance. *Id.* at 689. "A fair assessment of attorney performance requires that every effort be  
16 made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of  
17 counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the  
18 time." *Id.*

19 The second prong of the *Strickland* test requires a showing of actual prejudice related to  
20 counsel's performance. In order to establish prejudice, a petitioner "must show that there is a  
21 reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding  
22 would have been different. A reasonable probability is a probability sufficient to undermine  
23 confidence in the outcome." *Id.* at 694.

1 The reviewing Court need not address both components of the inquiry if an insufficient  
2 showing is made on one component. *Strickland*., 466 U.S. at 697. Furthermore, if both  
3 components are to be considered, there is no prescribed order in which to address them. *Id.*

4 The Washington Court of Appeals applied the *Strickland* test to petitioner's claim that  
5 counsel rendered ineffective when she failed to pursue a diminished capacity defense and found  
6 that petitioner had not sustained his burden of establishing that he was prejudiced by counsel's  
7 performance because he had not provided any evidence to support a diminished capacity defense.  
8 (Dkt. No. 29, Ex. 13.)

9 Petitioner appears to argue in these proceedings that the fact that he had his competency  
10 questioned several times prior to trial, and had been declared incompetent to stand trial at one  
11 point, establishes that his trial counsel rendered ineffective assistance when she failed to present  
12 a diminished capacity defense. (*See* Dkt. No. 13 at 5.) While the record before this Court  
13 certainly confirms that petitioner's mental health presented concerns for the court and counsel  
14 throughout petitioner's criminal proceedings, the record does not support petitioner's claim that  
15 trial counsel erred in failing to present a diminished capacity defense.

16 Petitioner's trial counsel was Kristen Murray. The record reflects that Ms. Murray took  
17 over petitioner's defense in August 2007, approximately a year after charges were originally  
18 filed against petitioner. During the early stages of the case, there were significant concerns  
19 regarding petitioner's competency to stand trial. (*See* Dkt. No. 29, Ex. 17, Trans. of Oct. 29,  
20 2007 at 5.) An initial competency evaluation apparently resulted in a determination that  
21 petitioner was competent to stand trial. (*Id.*)

22 Ongoing concerns regarding petitioner's competency led to a second evaluation and a  
23 finding that petitioner was not competent. (*See id.* and Trans. of Nov. 14, 2006 at 3-4.)

1 Petitioner was thereafter committed to Western State Hospital for a period of 90 days for  
2 competency restoration. (*See* Dkt. No. 29, Ex. 17, Trans. of Oct. 29, 2007 at 5 and Trans. of  
3 Nov. 14, 2006 at 3-4.) Though not entirely clear from the record before this Court, it appears  
4 that petitioner's competency was deemed restored at the end of that 90 day period and the  
5 criminal proceedings resumed. However, in June 2007, the trial judge ordered yet another  
6 psychological examination to evaluate petitioner's competency as well as to assess whether  
7 petitioner might have a mental health defense available to him such as diminished capacity or  
8 insanity. (*See* Dkt. No. 13, Attachment 2 at 3.) In late July 2007, petitioner was found  
9 competent to stand trial and his criminal proceedings resumed again. (Dkt. No. 29, Ex. 17,  
10 Trans. of July 25, 2007 at 5-6.)

11 After Ms. Murray took over the case, she sought a continuance so that she could explore  
12 whether there might be a mental health defense available to petitioner. (*See id.*, Trans. of Oct.  
13 24, 2007 at 6 and Trans. of Oct. 29, 2007 at 5.) Ms. Murray obtained funding, found an expert,  
14 and had petitioner evaluated. (*See id.*, Trans. of Oct. 24, 2007 at 5.) However, following the  
15 evaluation, the expert advised Ms. Murray that he didn't think petitioner's case reached the level  
16 of diminished capacity or insanity. (*Id.*, Trans. of Dec. 7, 2007 at 9.) He apparently did believe,  
17 however, that petitioner's condition was such that it would justify a downward departure at  
18 sentencing and Ms. Murray argued for such a departure at petitioner's sentencing hearing. (*See*  
19 *id.* at 6-10.)

20 The record makes clear that petitioner's trial counsel explored the possibility of a mental  
21 health defense but ultimately determined that such a defense was not available based on the  
22 opinion of the retained expert. Petitioner offered no evidence in his collateral proceedings before  
23 the state courts, and he offers no evidence in these proceedings, that a diminished capacity

1 defense was, in fact, available. Petitioner has not demonstrated that counsel's performance was  
2 either deficient or prejudicial. Accordingly, petitioner's ineffective assistance of counsel claim  
3 should be denied.

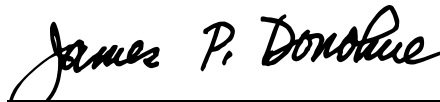
4 Certificate of Appealability

5 A petitioner seeking post-conviction relief under § 2254 may appeal a district court's  
6 dismissal of his federal habeas petition only after obtaining a certificate of appealability (COA)  
7 from a district or circuit judge. A certificate of appealability may issue only where a petitioner  
8 has made "a substantial showing of the denial of a constitutional right." See 28 U.S.C. §  
9 2253(c)(3). A petitioner satisfies this standard "by demonstrating that jurists of reason could  
10 disagree with the district court's resolution of his constitutional claims or that jurists could  
11 conclude the issues presented are adequate to deserve encouragement to proceed further."  
12 *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Under this standard, this Court concludes that  
13 petitioner is not entitled to a certificate of appealability with respect to his ineffective assistance  
14 of counsel claim.

15 CONCLUSION

16 For the reasons set forth above, this Court recommends that petitioner's petition for writ  
17 of habeas corpus be denied and that this action be dismissed with prejudice. This Court further  
18 recommends that a certificate of appealability be denied. A proposed order accompanies this  
19 Report and Recommendation.

20 DATED this 25th day of May, 2011.

21   
22 JAMES P. DONOHUE  
23 United States Magistrate Judge